



**Written Testimony of Representative Garey Bies
Assembly Committee on Natural Resources
Assembly Bill 818 – Wetland Identification Act**

Good morning Chairman Black and committee members, I appreciate the opportunity to submit my testimony in support of Assembly Bill 818, the Wetland Identification Act.

This wetland issue came to my attention several years ago when I had a constituent who inadvertently built partially upon a wetland. The constituent applied for and received all the necessary building permits and therefore went ahead with his project, not knowing that it was up to him to determine if his project infringed upon a wetland. It was not until the project was well underway that the Department of Natural Resources notified him that he had impacted a wetland.

My constituent did not intentionally damage a wetland. He simply did not know that it was his responsibility to determine the presence of a wetland even though the government issued him a permit to build. In this case, the ground that was determined to be a wetland bore no resemblance whatsoever to what one normally associates with a wetland; the ground was not “soggy” nor were there plants present one would expect, like cattails.

Ever since this constituent case, I have looked for a way to prevent this type of situation occurring again and to provide some assistance to an individual trying determine the existence of wetlands on their property. As I started to work on the legislation, Senator Mark Miller approached me about working together, as he too had an interest in this area and was also working on legislation concerning wetlands. In this effort, we were joined by Senator Alan Lasee, and this session, by Senator Pat Kreitlow and Representative Zigmunt. What you see before you in Assembly Bill 818 is the product of our work and will, I believe, be of great service to our landowners while also working to protect our state’s wetlands.

The legislation has two main components. First, the proposal requires that when an individual obtains a building permit, the local municipality issuing the permit must provide a notice to the applicant of their responsibility to determine if wetlands are present on their property where they intend to build.

The second main component of the legislation concerns the establishment of new services to be provided by the Department of Natural Resources to assist an individual in the determination of the presence of wetlands on their property. Under this legislation, three different services, or tiers, will be provided by the Department.

First for Wisconsin!

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First, for a fee of \$50, the Department will conduct a map review of the applicant's property. Using available mapping and other resources, the Department will conduct a remote review of the property and issue a written report as to the likely existence of wetlands on the property and then advise the applicant on whether further wetland review should be carried out prior to beginning their construction project.

The second "tier" of services provided by the Department under this proposal consists of an on-site evaluation of the applicant's property. For a fee of \$300 per acre of ground, the Department will perform an on-site determination of the property and issue a written report to the applicant as to the likely existence of a wetland in the project area.

It should be clearly noted that Tiers 1 and 2 do not provide wetland delineation services. The Tiers are designed to provide advice to the landowner as to whether their project has the potential to impact a wetland and if so, that further determination be performed.

The third "tier" of services consists of an applicant requesting the Department to confirm the boundaries of a wetland delineated by a 3rd-party. This service would have a fee of \$300 per 20 acres inspected by the Department.

The third "tier" of service allows a landowner to have full confidence in a wetland delineation performed on their property.

All three of these tiers have specific timelines with which the Department shall carry out these services. The on-site services are obviously contingent upon weather and ground conditions.

It seems that in the past few years there is a greater understanding by Wisconsinites of our state's wetlands, the impact of those wetlands on the environment and the importance of protecting them. Efforts like the "Wetland Gems" program of the Wisconsin Wetlands Association increase the attention and public awareness of our wetlands and I believe instituting the provisions of this legislation will greatly assist in identifying and protecting wetlands from inadvertent damage.

Thank you for the opportunity to present my testimony in support of Assembly Bill 818 and I would be happy to answer any questions you may have.



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Wisconsin Wetlands Association Testimony on AB 818

March 16, 2010

Presented by Policy Director Erin O'Brien

Wisconsin Wetlands Association has registered in support of Assembly Bill 818 because we believe it will help to protect wetlands and the private landowners who own them. We are appearing before this committee to share our perspective on the problems this bill will help to address and to offer recommendations for minor modifications needed to ensure that the legislation meets its intended objectives.

Helping people understand what wetlands are, why they matter, and why and how state and federal wetland protection laws are implemented and enforced is a major emphasis of the Wisconsin Wetlands Association's work. It is also our greatest challenge.

While most people recognize cattail marshes or bogs as wetlands, many landowners are unfamiliar with other wetland types including floodplain forests, fens, hardwood swamps, sedge meadows, alder thickets and ephemeral ponds. Many landowners are also unfamiliar with the requirements of state and federal wetland laws which, combined, discourage development in all wetlands regardless of type, size, or location.

This lack of understanding leads to unintentional violations of wetland laws, causing unnecessary destruction of wetlands as well as inconvenience and financial hardship for property owners.

In response to these concerns, AB 818 proposes several important measures that will help protect wetlands and the private landowners who own them. Outlined below are our comments on the value and potential effectiveness of each of the proposed measures.

1. Required Notice on Certain Approvals: We strongly support the sections of the bill that require counties, cities, villages, and towns to notify permit applicants about wetland laws and DNR's wetland identification tools. Because many local governments use standard forms issued by the WI Department of Commerce (DOC), we also support the provision requiring DOC to amend their forms to include this information.

To strengthen this provision, we recommend including a deadline for the DOC to revise and reissue their forms. We also recommend that local governments be required to issue their own notification statements until DOC releases the revised forms and be required to secure a signature from the applicant acknowledging receipt of the notice regardless of

whether it comes on a DOC or locally-issued form (as written, the signature may only be required if the notification appears on a locally-generated form).

2. Wetlands informational brochure: We strongly support the requirement for WDNR to develop an informational brochure about wetland identification and wetland laws for local governments to distribute to permit applicants.

3. Wetland map review, identification, and confirmation: We agree that there is a need for WDNR to provide more assistance to help landowners identify wetlands on their property. We support some, but not all, of the methods proposed as follows:

Tier 1 – Wetland Map Review:

Because the public can already download wetland indicator maps for free through WDNR's web-site, we would like to see WDNR help the limited number of people who don't have internet access use computers (e.g., rural residents and seniors) to access this information for free. Charging a fee is appropriate in cases where WDNR will review and evaluate resources not readily available on the web (e.g., aerial photos).

In either case, it must be clear in the statute and in WDNR's communications about these services that a map review is not a definitive indicator of the presence or absence of wetlands for regulatory purposes. Site-visits are necessary to confirm the presence and location of wetlands on a property. We suggest the following language:

"Since the information provided will not be based on an on-site review, it will be useful for planning purposes only. The department will not use a map review to certify where wetlands are and are not specifically located on a given parcel."

Tier 2 – Wetland Identification

We would prefer to see this section of the bill eliminated due to concerns about WDNR's capacity to provide the proposed service. It is work that is currently handled by the private sector where there is more experience and more time to be responsive to landowners' information needs.

If the provision remains in the bill, we recommend that the service be limited to smaller parcels (e.g., 1-2 acres) or a single project site (e.g., one structure and/or access road). The intent of the bill is to help individual landowners avoid inadvertently building in wetlands. Projects greater than 1-2 acres are typically managed by a professional developer. Developers should rely on private consultants, not public agencies, to complete their regulatory review work.

Tier 3 – Wetland Confirmation

We enthusiastically support the inclusion of this tier of service in this bill. Though a memorandum of agreement with the U.S. Army Corps of Engineers would be required for WDNR's confirmation decisions to be considered valid for federal regulatory purposes, we urge the legislature to require WDNR to provide this service for the specified fee regardless of whether the MOU is secured.

Confirmation of wetland boundaries is a service that wetland consultants, private developers, and many local governments want, and one that some WDNR staff formerly provided as their schedules allowed. As part of the Department's workload reduction plan to handle budget cuts, WDNR leadership recently informed staff that they were no longer allowed to provide this service. Confirmation of wetland boundaries is an important service for WDNR to provide to meet their obligations to implement and enforce state wetland laws and to provide good customer service to the regulated public.

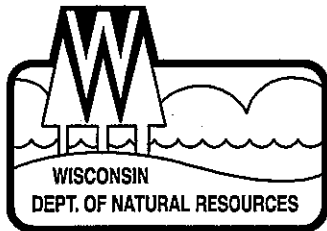
Finally, because some sections of this bill have budget implications we recognize that it may be difficult to pass at this time. If that is the case, please consider immediate passage of the sections that do not have budget implications, specifically: a) the sections that require local governments to notify permit applicants about wetland identification tools and wetland laws and, b) the section that requires WDNR to develop an informational brochure for distribution by local governments to permit applicants.

We thank you for your consideration of these comments.

Wisconsin Wetlands Association is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy. WWA is a non-profit 501(c)(3) organization.

Questions about these comments should be directed to Wisconsin Wetlands Association's Policy Director, Erin O'Brien at 608-250-9971 / erin.obrien@wisconsinwetlands.org.

More information about Wisconsin's Wetlands can be found at www.wisconsinwetlands.org



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Testimony of the Department of Natural Resources regarding AB 818

Assembly Committee on Natural Resources March 24, 2010

The Department is here to testify in support of AB 818, and we would like to thank Representative Bies, along with Senators Miller and Kreitlow, for their efforts to move this bill forward. This bill will help people determine if wetlands are present before they buy or build, and early wetland identification is key to successfully protect our state's wetland resources. This bill proposes two mechanisms to help people identify wetlands early – a wetland/lakes/streams notification requirement, and a wetland identification program.

We support the wetland notification requirement on local building permits as outlined in the bill. It is a simple mechanism that informs applicants of their responsibility to comply with state and federal laws involving construction near or on wetlands, lakes or rivers and the consequences of not complying. We anticipate it will be easy for local communities to implement through their building permits, and the notification can also direct people to DNR's new *Locating Wetlands* web pages, which provide additional resources landowners can use to determine if a property contains wetlands, and information about applicable wetland laws.




























The proposed wetland identification program provides the public with an optional fee-based service where DNR staff will conduct map reviews, on-site wetland identification, and on-site confirmation of wetland boundaries determined by a 3rd party. The proposed program is modeled after an existing program available in the state of Michigan, and we support a wetland identification program for Wisconsin.

Since the last time this bill was considered a few years ago, several things have changed relative to our work with wetlands in Wisconsin. As a result, we do have a few concerns and hope to work with you to address them:

1. The revenue will not support the program costs. Our fiscal analysis anticipates that the revenue generated from fees under this bill will only cover about half of program implementation costs.
 - We don't anticipate many requests for map reviews (Tier 1), which may decrease the total fee revenues this program would generate. Since this bill was originally introduced in the 2007 legislative session, DNR has developed a number of web-based mapping tools that are now available on the internet at no cost. Digital wetland inventory maps and new wetland indicator maps are now accessible on DNR's website, and anyone can view these two map layers and determine for themselves if wetlands are likely present on a property.



Major Highways

-  Interstate
-  State Highway
-  U.S. Highways
-  County Roads
-  Local Roads
-  24K County Boundaries
-  Civil Towns
-  Civil Town
-  USDA Wetspots
-  DNR Wetland Points
-  Excavated Pond
-  Dammed Pond
-  Wetland Too Small to Delineate
-  Filled Excavated Pond
-  Filled Dammed Pond
-  Filled Wetland Too Small to Delineate
-  Filled or Drained Wetland
-  DNR Wetland Areas
-  Upland
-  Wetland
-  Filled or Drained Wetland
-  Wetland Indicator Soils
-  24K Open Water
-  24K Rivers and Shorelines
-  Intermittent
-  Fluctuating
-  Perennial

Scale: 1:18,232



Map created on Mar 24, 2010

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